

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	File No. EB-02-TC-017
)	
Suburban Cable TV Co., Inc.)	CUID No. PA2146 (Buckingham Township)
)	
Complaints Regarding)	
Cable Programming Services Tier Rates)	
and Petition for Reconsideration)	

ORDER

Adopted: July 16, 2002

Released: July 17, 2002

By the Chief, Enforcement Bureau:¹

1. In this Order, we consider a petition for reconsideration ("Petition") of Cable Services Bureau Order, DA 95-1227 ("Prior Order"),² filed with the Federal Communications Commission ("Commission") by the above-referenced operator ("Operator").³ Operator also requested a stay of the Prior Order, which was granted.⁴ The Prior Order resolved complaints filed against the rates charged by Operator for its cable programming services tier ("CPST") in the community referenced above through May 14, 1994. In the Prior Order, the Cable Services Bureau stated that its findings "do not in any way prejudice the reasonableness of the price for CPS service after May 14, 1994 under our new rate regulations."⁵ In this Order we deny Operator's Petition in part, grant it in part, modify the Prior Order, vacate the stay and order the payment of refunds. We also address the reasonableness of Operator's CPST rates beginning May 15, 1994.

2. Under the provisions of the Communications Act⁶ that were in effect at the time the complaints were filed, the Commission is authorized to review the CPST rates of cable systems not subject to effective competition to ensure that rates charged are not unreasonable. The Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act")⁷ and the Commission's rules required the

¹ Effective March 25, 2002, the Commission transferred responsibility for resolving cable programming services tier rate complaints from the former Cable Services Bureau to the Enforcement Bureau. *See Establishment of the Media Bureau, the Wireline Competition Bureau and the Consumer and Governmental Affairs Bureau, Reorganization of the International Bureau and Other Organizational Changes*, FCC 02-10, 17 FCC Rcd 4672 (2002).

² *See In The Matter of Suburban Cable TV Co., Inc.*, DA 95-1227, 10 FCC Rcd 6495 (CSB 1995).

³ The term "Operator" includes Operator's successors and predecessors in interest.

⁴ *See Petitions for Stay of Action*, DA 95-1795, 10 FCC Rcd 10591 (CSB 1995).

⁵ Prior Order at n. 1.

⁶ 47 U.S.C. §543(c) (1996).

⁷ Pub. L. No. 102-385, 106 Stat. 1460 (1992).

Commission to review CPST rates upon the filing of a valid complaint by a subscriber or local franchising authority ("LFA"). The Telecommunications Act of 1996 ("1996 Act"),⁸ and the Commission's rules implementing the legislation ("Interim Rules"),⁹ required that a complaint against the CPST rate be filed with the Commission by an LFA that has received more than one subscriber complaint. The filing of a valid complaint triggers an obligation upon the cable operator to file a justification of its CPST rates.¹⁰ If the Commission finds the rate to be unreasonable, it shall determine the correct rate and any refund liability.¹¹

3. During the first phase of rate regulation, from September 1, 1993 until May 15, 1994, the benchmark rate analysis and comparison with an operator's actual rates were calculated using the FCC Form 393.¹² The benchmark formula was revised, effective May 15, 1994.¹³ Systems first becoming subject to rate regulation after May 15, 1994 were required to justify their initial regulated rates using forms in the FCC Form 1200 series.¹⁴ Systems against which rate complaints were still pending when the Commission revised its benchmark formula were required to recalculate their benchmark rates as of May 15, 1994 using the FCC Form 1200.¹⁵ Cable operators may justify their rates through a cost of service showing using FCC Form 1220.¹⁶ In reviewing an operator's FCC Form 1220 cost of service showing, we evaluate the operator's rate base and expense elements to determine whether the operator should be permitted to recover those items. Where a certain rate base or expense element is not justified under our rules, such cost is disallowed in whole or in part.¹⁷ Where reported costs are disallowed, we make appropriate adjustments.

4. In its Petition, Operator raises two issues that have been addressed in previous orders. Operator first argues that the Cable Services Bureau erred when imputing normalized taxes to Operator's customer equipment costs prior to unbundling those costs from Operator's service rates. The Cable

⁸ Pub. L. No. 104-104, 110 Stat. 56 (1996).

⁹ See *Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 5937 (1996).

¹⁰ See Section 76.956 of the Commission's rules, 47 C.F.R. §76.956.

¹¹ See Section 76.957 of the Commission's rules, 47 C.F.R. §76.957.

¹² See *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, 8 FCC Rcd 5631, 5755-56, 5766-67, 5881-83 (1993).

¹³ See *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, 9 FCC Rcd 4119 (1994).

¹⁴ See Section 76.922 of the Commission's rules, 47 C.F.R. § 76.922.

¹⁵ *Id.*

¹⁶ See Section 76.922(l) of the Commission's Rules, 47 C.F.R. §76.922(l). See also, *Second Report and Order, First Order on Reconsideration, and Further Notice of Proposed Rulemaking*, MM Docket No. 93-215 and CS Docket No. 94-28, FCC 95-502, 11 FCC Rcd 2220 (1996).

¹⁷ The Commission made clear that the fact that an operator has incurred costs does not necessarily establish its right to recover those costs from subscribers. See *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, MM Docket No. 92-266, Report and Order and Further Notice of Proposed Rulemaking, 8 FCC Rcd 5631, 5794 at n. 619 (1993).

Services Bureau previously addressed this issue at length in *Suburban Cable*.¹⁸ The discussion in that case is directly on point and need not be repeated here. The Cable Services Bureau concluded that the benchmark rate methodology contemplates the unbundling of normalized taxes and it would be arbitrary and inconsistent for the Commission to build normalized taxes into the pricing of tier offerings and only unbundle actual taxes attributable to equipment costs. We conclude here, as the Cable Services Bureau did in *Suburban Cable*, that it was not error for the Cable Services Bureau to impute normalized taxes to Operator's customer equipment costs prior to unbundling those costs from Operator's service rates.

5. The second issue raised by Operator in its Petition, concerning the adjustment of its inflation factor, was thoroughly addressed by the Commission in *Cencom Cable Income Partners* ("*Cencom*")¹⁹ and that discussion need not be repeated here. Because we find that the Cable Services Bureau's action in the Prior Order is consistent with the Commission's holding in *Cencom*, we reject Operator's argument.

6. The third and final issue raised by Operator concerns a clerical error contained in the channel line-up card provided by Operator for the period reviewed in the Prior Order. Operator asserts in its Petition, and provides evidence thereof, that the channel line-up for the CPST included 23 channels during the FCC Form 393 time period. We agree that a clerical error was made and we find Operator's argument to be compelling. Upon review of Operator's FCC Form 393, including the allowance for 23 CPST channels, we find that Operator has justified a maximum permitted rate ("MPR") of \$10.90, rather than the MPR of \$10.58 calculated in the Prior Order.²⁰ Because Operator's actual CPST rate of \$12.15, effective January 4, 1994 (the date the first valid complaint was filed with the Commission) through May 14, 1994, exceeds its MPR of \$10.90, we find Operator's actual CPST rate of \$12.15, effective January 4, 1994 through May 14, 1994, to be unreasonable.

7. Upon review of Operator's FCC Form 1220, we find Operator's actual CPST rates to be reasonable beginning May 15, 1994. Finally, we calculate a refund plan for the refund liability period addressed in this Order as follows: For the period from January 4, 1994 through May 14, 1994, we calculate an overcharge of \$1.25 per month per subscriber. Our total calculation, including interest through August 31, 2002, equals \$19,091.12. Our calculation does not include franchise fees. We will order Operator to refund this amount, plus any additional interest accrued to the date of refund, plus franchise fees, if any, and interest on the franchise fee principal amount, to its CPST subscribers within 60 days of the release of this Order.

¹⁸ *In the Matter of Suburban Cable TV, Inc.*, DA 97-2032, 13 FCC Rcd 13111 (CSB 1997). See also, *In the Matter of Charter Communications*, DA 02-637 (CSB released March 20, 2002).

¹⁹ *In the Matter of Cencom Cable Income Partners II, LP*, FCC 97-205, 12 FCC Rcd 7948 at ¶ 11 (1997).

²⁰ These findings are based solely on the representations of Operator. Should information come to our attention that these representations were materially inaccurate, we reserve the right to take appropriate action. This Order is not to be construed as a finding that we have accepted as correct any specific entry, explanation or argument made by any party to this proceeding not specifically addressed herein. Information regarding the specific adjustments made to Operator's FCC Forms can be found in the public files for the above-referenced community which are available in the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC, 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail qualexint@aol.com.

8. Accordingly, IT IS ORDERED, pursuant to Section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, that the petition for reconsideration filed by Operator is GRANTED IN PART AND DENIED IN PART TO THE EXTENT INDICATED HEREIN.

9. IT IS FURTHER ORDERED, pursuant to Sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111 and 0.311, that *In The Matter of Suburban Cable TV Co., Inc.*, DA 95-1227, 10 FCC Rcd 6495 (CSB 1995) IS MODIFIED TO THE EXTENT INDICATED HEREIN.

10. IT IS FURTHER ORDERED, pursuant to Sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111 and 0.311, that the stay of Order DA 95-1227, granted in *Petitions for Stay of Action*, DA 95-1795, 10 FCC Rcd 10591 (CSB 1995), IS VACATED.

11. IT IS FURTHER ORDERED, pursuant to Sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111 and 0.311, that the CPST rates, charged by Operator in the community referenced above, beginning May 15, 1994, ARE REASONABLE.

12. IT IS FURTHER ORDERED, pursuant to Sections 0.111, 0.311 and 76.962 of the Commission's rules, 47 C.F.R. §§ 0.111, 0.311, and 76.962, that Operator shall refund to subscribers in the franchise area referenced above the total amount of \$19,091.12, plus interest accruing from August 31, 2002 to the date of refund, plus franchise fees, if any, and interest on the franchise fee principal amount within 60 days of the release of this Order.

13. IT IS FURTHER ORDERED, pursuant to Sections 0.111, 0.311 and 76.962 of the Commission's rules, 47 C.F.R. §§ 0.111, 0.311, and 76.962, that Operator file a certificate of compliance with the Chief, Enforcement Bureau, within 90 days of the release of this Order certifying its compliance with this Order.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau